

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

2019 APR 11 AM 8:47

CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY DEPUTY

UNITED STATES OF AMERICA

§

§

V.

§

CRIM. NO. A-18-CR-109(01)-LY

§

JARED PATTON ROARK

§

ORDER ON DEFENDANT'S MOTION TO SUPPRESS

Before the court are Defendant Jared Patton Roark's Motion to Suppress Evidence filed December 10, 2018 (Doc. #38) and Government's Response to Defendant's Motion to Suppress Evidence filed February 11, 2019 (Doc. #39). The court conducted a hearing on the motion to suppress on March 28, 2019. Following the hearing, Roark filed a Post Suppression Hearing Brief on April 2, 2019 (Doc. #50), and the Government's Response to Defendant's Post-Suppression Brief was filed April 5, 2019 (Doc. #51). Having considered the motion, response, the evidence presented at the hearing, the arguments of counsel, and the briefing filed after the hearing, the court will deny the motion for the reasons to follow.

Factual Summary

On February 13, 2018, Defendant Jared Patton Roark and his girlfriend Lisa Hogan were involved in an altercation with Angela Clark and Jesus Mares in the parking lot of Roark and Clark's apartment complex. Hogan is alleged to have physically assaulted Clark, and when Mares came to Clark's defense, Roark is alleged to have pointed a pistol at Mares, striking him on the side of the head with the pistol. Clark and Mares reported the incident to the Austin Police Department and an arrest warrant was issued for Roark for the alleged assault.

Detective Chris Anderson, a member of the Austin Police Department Metro Tactical Team responsible for serving arrest warrants, was assigned as the lead officer in Roark's arrest. Anderson

created a warrant packet containing search results of Roark's social-media presence, a review of Roark's history with law enforcement, and a review of Roark's computerized criminal history to determine if Roark demonstrated violent tendencies and whether those tendencies created a potential danger to arresting officers. Based on the February 13, 2018 incident and the his subsequent research, Anderson determined that Roark possessed a gun; had a prior felony conviction prohibiting him from possessing a firearm; had a history of violence, including arrests for assault, resisting arrest, and evading arrest or detention; and was a former member of the Red Guards, a violent, anti-fascist group based in Austin, Texas. Anderson was also aware that Roark was involved in a protest at the state capitol in Austin, Texas, during which troopers with the Texas Department of Public Safety arrested Roark for attempting to light a protester's sign on fire.

Roark and Hogan lived together in an apartment at 2221 Willow Creek Drive, in Austin, Texas. Hogan was the lessee for this address. Jesse Arost was listed as the utilities registrant for the same apartment. Arost was also known to be a Red Guards member and had a previous arrest for assaulting a male with a club during a Red Guards protest.

On March 3, 2018, Anderson, serving as "plain clothes surveillance," watched the apartment door at the address provided on the arrest warrant. Around 1:00 p.m., Anderson spotted Roark walking his dog outside of his apartment and gave the signal to the arrest team. Uniformed officers detained Roark, at which time Roark asked the officers if he could return his dog to Roark's apartment. While escorting Roark to the squad car and the dog back to the apartment, Roark began shouting:

“Yo, Call George Lobb, the cops have me. Cindy, Call George, the police have me! Cops, Cops, Cops, Cops! Call George Lobb! Police! Jesus is a fucking snitch! He’s making shit up! Call George!”

Roark’s shouting began within 20 yards of his apartment, causing several other residents to emerge from their apartments. While Roark was still shouting, officers knocked on Roark’s apartment door and Hogan answered. The officers identified themselves, and Anderson asked Hogan to show her hands and step outside. Hogan complied and was detained.

When asked, Hogan stated that there were no other individuals in the apartment. Officers conducted a protective sweep to ensure there were no persons inside the apartment. The sweep took place two minutes after Roark was placed in the patrol car by another officer who joined the team to make entry into the apartment. Within 30 seconds after officers entered the apartment, they observed in plain view a small black semi-automatic handgun on a night stand in the master bedroom and several semi-automatic rifles inside a closet. Hogan confirmed that the master bedroom belonged to both her and Roark and stated that the firearms were legal.

With this information, Anderson called Detective Valentin De Los Santos, the lead investigator in the assault case, who prepared the affidavit in support of the evidentiary search warrant based upon the information he received from Anderson. Officers obtained and executed the search warrant, seizing the firearms identified during the sweep, a vest of AK-47 magazines, ammunition, smoke-grenade receipts, diagrams depicting assaulting police, and other related materials.

In his motion to suppress, Roark argues that the Government cannot meet its burden to show that the protective sweep was reasonable, rendering the subsequently obtained search warrant tainted

by illegally obtained evidence. In addition, Roark argues that the affidavit supporting the search warrant contains false statements made intentionally or with reckless disregard of the truth, rendering the remaining content insufficient to establish probable cause.

Protective Sweep

Roark contends that the warrantless entry by officers into his apartment up to five minutes after Roark was detained was a illegitimate search that was unconnected with taking Roark into custody on the arrest warrant outside his apartment. A warrantless entry into a home is presumptively unreasonable. *See United States v. Howard*, 106 F.3d 70, 73 (5th Cir. 1997). However, exigent circumstances may justify a warrantless entry. *Id.* When a person is subjected to a warrantless search, the government bears the burden of proving that the search was justified. *United States v. Garcia-Lopez*, 809 F.3d 834, 838 (5th Cir. 2016).

The Fourth Amendment permits “a properly limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene.” *Maryland v. Buie*, 494 U.S. 325, 337 (1990). “In the absence of a search warrant, a protective sweep must be ‘quick and limited’ and ‘narrowly confined to a cursory visual inspection of those places in which a person might be hiding.’” *United States v. Silva*, 865 F.3d 238, 243 (5th Cir. 2017) (quoting *Buie*, 494 U.S. at 327). “The sweep lasts no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises.” *Buie*, 494 U.S. at 3335–36.

Such a sweep is justified only when there are “articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that

the area to be swept harbors an individual posing a danger to those on the arrest scene.” *Silva* 865 F.3d at 242 (citing *Buie*, 494 U.S. at 327). When determining whether a protective sweep is justified, a court should consider the totality of the circumstances surrounding the officers’ actions. *See id.*

The protective-sweep doctrine may apply even if the arrest occurs outside the home. *See id.*; *see also United States v. Maldonado*, 472 F.3d 388, 393 (5th Cir. 2006)). In *Silva*, the Fifth Circuit upheld a protective sweep where there was no indication of others present in a trailer, but was a location from which attacks could be launched. *Id.* at 242–43.

Having reviewed the motion, response and additional briefing, and having considered the testimonial evidence, video evidence, and arguments of counsel at the hearing, the court finds that it was reasonable for the officers to be concerned about other people who may be affiliated with the Roark and who might still be in the apartment, including Roark’s calling out to specific individuals “Cindy” and “George Lobb,” who were either unknown to the officers or whose names were possibly used as code for individuals who may have been in the apartment¹; the possibility that Arost lived in the apartment and that his whereabouts were unknown; the possible presence of the firearm in the apartment as Roark was alleged to have used one in a recent assault of Mares; and the fact that Roark, Hogan, and Arost were known members of an anti-government group with a strong dislike for law-enforcement officers, rendering them untrustworthy.

¹ At some point in time, the officers learned that George Lobb had been Roark’s attorney, although the evidence presented to the court is not clear as to whether the officers knew that Lobb represented Roark before Roark yelled out his name after he was taken into custody. Regardless, the officers were reasonable to be concerned about who Roark might be calling out to when he began yelling for “Cindy” and “George Lobb,” and whether such or other individuals might still be in the apartment. Even if the officers knew at the time that Lobb was Roark’s attorney, they acted reasonably in not taking Roark’s yelling at face value.

The timing of the sweep, whether it be two or five minutes after Roark was detained, although a factor for the court to consider, does not outweigh the other factors in this case. The evidence presented indicates that the protective sweep took place within two minutes after Hogan was detained and Roark was placed in to the squad car, allowing just enough time for the officer escorting Roark to return to the apartment to assist in the sweep. The possibility that other persons remained in the apartment, along with a firearm officers believed was in the apartment, suggested a possible threat that a reasonably prudent officer would believe should be pursued by entering the apartment to conduct a protective sweep. Therefore, the court concludes that the Government has met the burden of proving that the search of the apartment was justified.

*Franks v. Delaware*²

Roark further asserts that Anderson intentionally or recklessly made false or misleading statements in recounting the events surrounding Roark's arrest which were included in the affidavit in support of the search warrant, rendering the remaining content of the affidavit insufficient to establish probable cause.³ A search warrant must be voided if the defendant shows by a

² 438 U.S. 154 (1978).

³ Roark asserts that Anderson made the following misrepresentations that De Los Santos included in the affidavit he prepared for the search warrant:

1) "[A plain clothes officer] observed Roark walk outside the apartment with a dog. While Roark was outside, Austin Police officers wearing uniforms clearly distinguishing them as police officers detained Roark." (In fact, Roark on the other side of an apartment building, over 200 feet away, at a location where no one inside the apartment could see him).

2) "Roark was yelling "Cops! Cops! Cops! Call George Lobb, Contact. Cindy, call George, Cindy call George, police have me. Call George. Cops! Cops! Cops! Cops! Cops! Cops! Call Georg Lobb! Help me, help me!" (In fact, Roark did not say "Help me, help me!").

preponderance of the evidence that the affidavit supporting the warrant contained a false statement made intentionally or with reckless disregard for the truth and, after setting aside the false statement, the affidavit's remaining content is insufficient to establish probable cause. *See Franks v. Delaware*, 438 U.S. 154 (1978).; *see also United States v. Alvarez*, 127 F.3d 372, 373–74 (5th Cir. 1997) (“If a search warrant contains a false, material statement made intentionally or with reckless disregard for the truth, the reviewing court must excise the offensive language from the affidavit and determine whether the remaining portion establishes probable cause.”).

A *Franks* inquiry consists of three factors, all of which must be considered by the court. First, the court must determine if the affidavit contains a false statement. *See, e.g., United States v. Singer*, 970 F.2d 1414, 1416–17 (5th Cir. 1992) (affirming denial of motion to suppress because affidavit's statement was not false). Second, the court must determine that the false statement was made intentionally or with reckless disregard for the truth. *See, e.g., United States v. Looney*, 532 F.3d 392, 394–95 (5th Cir. 2008) (affirming denial of motion to suppress because affiant officer did not intentionally or recklessly include false statement). And third, the court must determine whether the remaining content of the affidavit fails to establish probable cause if the false statement is excised. *See, e.g., United States v. Froman*, 355 F.3d 882, 889–91 (5th Cir. 2004) (assuming that

3) “Hogan clearly heard these shouts. She moved to shut the door opened the door then backed away quickly into the apartment with her hands up, leaving the door open. Hogan’s actions and Roark’s shouts for help, led police to believe Roark was calling for confederates in the apartment to come to his aid. (In fact, Hogan did not move to shut the door. Moreover, Roark never said “help me, help me”).

4) Officer Anderson never disclosed that the sweep occurred almost five minutes after Roark’s arrest on the other side of the apartment complex. He led Detective De Los Santos to believe that Roark was arrested “walking out of the apartment.”

purportedly false statement should be excised and affirming denial of motion to suppress because remaining content in affidavit established probable cause).

Even assuming that the four statements in the supporting affidavit identified by Roark are false and intentionally or recklessly misleading, Roark fails to show how those statements are material or how the remainder of the affidavit is insufficient to establish probable cause absent those statements. As stated in the supporting affidavit, a handgun matching the description of the handgun used in the assault that led to Roark's arrest warrant was observed in plain sight by the officers conducting the protective sweep of the apartment. Having concluded that the protective sweep was reasonable, the court concludes that any misstatements included in the supporting affidavit for the search warrant are immaterial and do not render the remainder of the affidavit invalid to show probable cause to issue the search warrant.

Conclusion

The court concludes that based on the totality of the circumstances (1) the protective sweep of Roark's apartment was justified, because officers had a reasonable belief that there was potential danger in the apartment to the officers or others, and (2) the facts set out in the search-warrant affidavit established probable cause authorizing issuance of the search warrant in this case.

IT IS THEREFORE ORDERED that Defendant Jared Patton Roark's Motion to Suppress Evidence filed December 10, 2018 (Doc. #38) is **DENIED**.

SIGNED this 10th day of April, 2019.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE